

# THE LAWYER AND THE PUBLIC: AN A. A. L. S. SURVEY

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AT ITS annual meeting in 1933 the Association of American Law Schools considered at length the economic condition of the Bar. The questions asked concerned not merely the welfare of the lawyers, but also the service they were rendering the public. Perhaps the more insistent query was as to how well the lawyers were supplying adequate and competent legal service to all sections of the modern society.<sup>1</sup> There developed a general consensus of view that not enough information was available to afford dependable answers to these important questions. The Association therefore voted to ask its Committee on Co-operation With the Bench and Bar to develop plans for securing such information.<sup>2</sup> The Committee interpreted its obligation as primarily that of working out a methodology for conducting surveys of the bar which (a) should be widespread enough to give a fair picture of conditions in various parts of the country, and (b) should show how the needs of the community for legal service were being met.<sup>3</sup> Accordingly, with financial assistance

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1. See the Proceedings of the 31st Annual Meeting of the Association of American Law Schools, and particularly the following addresses: Clark, *Law Professor, What Now?* (1933) HANDBK. ASS'N AM. L. SCHOOLS 14, (1934) 20 A. B. A. J. 431, (1934) 7 AM. L. SCHOOL REV. 1009; Chandler, *What the Bar Does Today* (1933) HANDBK. ASS'N AM. L. SCHOOLS 36, (1934) 7 AM. L. SCHOOL REV. 1017; Ruml, *The Social Function of Law and Lawyers* (1933) HANDBK. ASS'N AM. L. SCHOOLS 43, (1934) 7 AM. L. SCHOOL REV. 1022; Shafroth, *Can the Law Schools Lead Us Out of the Wilderness?* (1933) HANDBK. ASS'N AM. L. SCHOOLS 48, (1934) 7 AM. L. SCHOOL REV. 1026; Green, *The Law Professor, The Lawyer's Brain Trust* (1933) HANDBK. ASS'N AM. L. SCHOOLS 55, (1934) 7 AM. L. SCHOOL REV. 1031; Llewellyn, *Where Do We Go From Here?* (1933) HANDBK. ASS'N AM. L. SCHOOLS 62, (1934) 7 AM. L. SCHOOL REV. 1037.

2. See vote of the Association of American Law Schools: "I therefore move you that the Committee on Co-operation With the Bench and Bar be instructed to look into the question of the lawyer's service to the general public and report in 1934 and that they be authorized to expend for purposes of their inquiry any sums for which they secure the advance approval of the Executive Committee." (1933) HANDBK. ASS'N AM. L. SCHOOLS 125.

3. Report of the Committee on Co-operation With the Bench and Bar (1934) HANDBK. ASS'N AM. L. SCHOOLS 180. Cf. addresses by Garrison, *Results of the Wisconsin Bar Survey, With Some Suggestions for Future Bar Surveys* (1934) HANDBK. ASS'N AM. L. SCHOOLS 58, (1935) 8 AM. L. SCHOOL REV. 116; Rutledge, *A Survey of the Welfare of the Missouri Bar* (1934) HANDBK. ASS'N AM. L. SCHOOLS 74, (1935) 8 AM. L. SCHOOL REV. 128; Llewellyn, *The New York County Lawyers' Association Bar Survey* (1934) HANDBK. ASS'N AM. L. SCHOOLS 83, (1935) 8 AM. L. SCHOOL REV.

from the Association and from the Federal Emergency Relief Administration, the Committee conducted a preliminary study designed to test methods of obtaining data from the lawyers as to their economic condition, and from the lay public as to experience with, or without, lawyers.<sup>4</sup> From this experiment there were developed methods which it is believed can be profitably employed by bar associations, law schools, or other interested groups for studying conditions in their own localities. If a substantial number of local surveys can be carried out, the combined results will afford a picture fairly representative of conditions in this country. It is not necessary that a complete census be taken, for fair samples from different areas will disclose with sufficient accuracy the way the American bar is functioning.<sup>5</sup>

Even though this study was only experimental, widespread interest in it developed, particularly because of the unique feature of the attempted survey of the public's attitude towards the lawyers. This article is a report of some of the things discovered. Since to most readers results are probably more interesting than methods, and since the methods are being explained in detail elsewhere—in a proposed manual for bar surveyors<sup>6</sup>—we shall discuss techniques only briefly, while we present more at length the information obtained from the test studies which were carried on in Connecticut, notably in New Haven and Hartford.<sup>7</sup>

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135; and Clark, *The Proposed National Bar Survey* (1934) HANDBK. ASS'N AM. L. SCHOOLS 88, (1935) 8 AM. L. SCHOOL REV. 138. See also report of the same committee in (1935) HANDBK. ASS'N AM. L. SCHOOLS 191.

4. See final report of the Committee on Co-operation With the Bench and Bar (1936) HANDBK. ASS'N AM. L. SCHOOLS 275. The total cost of the study was slightly in excess of \$1,000, of which the Federal Emergency Relief Administration contributed about two-thirds, and the Association of American Law Schools one-third.

5. Other bar surveys are described in the report of the Special Committee on the Economic Condition of the Bar, L. K. Garrison, chairman, (1937) 62 A. B. A. REP. 869. In general, these reports represented an investigation of the lawyer, with particular stress upon his income. The notable surveys in Wisconsin and New York City, the first directed by Dean Garrison, the second by a committee of the New York County Lawyers' Association, of which Mr. Isidor Lazarus was chairman, are referred to below. Reports of them are to be found in Garrison, *A Survey of the Wisconsin Bar* (1935) 10 WIS. L. REV. 131, and in *Survey of the Legal Profession in New York County with Conclusions and Recommendations* (1936) REPORT OF THE COMMITTEE OF PROFESSIONAL ECONOMICS OF THE NEW YORK COUNTY LAWYERS' ASSOCIATION.

6. A MANUAL OF BAR SURVEYS—to include the material developed from this study—is in course of preparation by Dean Garrison for the Special Committee on the Economic Condition of the Bar of the American Bar Association. See the report referred to in note 5, *supra*.

7. The study was under the general direction of the Committee on Co-operation With the Bench and Bar of the A.A.L.S., as referred to above. The writers supervised the study and are responsible for its details and for any errors which may have developed in it. We were assisted by a considerable staff of energetic and faithful workers, among whom we should at least mention specially Mrs. Bernice Smith, the director of the field studies.

For our present purposes it may be sufficient to state that the chief means of collecting data here employed was the personal interview. The persons interviewed included laymen and lawyers, whose names were obtained by a process of fair sampling—hereinafter described—from those available in the communities under observation.<sup>8</sup> The interviewers were young lawyers or other professional men on relief and students in need of financial aid. Reasonable intelligence, pleasant personality, and persistence, rather than technical skill, were requisites. Of course, for supervision and for analysis of the data more skill and experience was needed. Refusals to answer were negligible—too few to cast doubt upon the results.<sup>9</sup> Those that occurred were clearly due to easily explainable causes, such as language difficulties with immigrants, and the reticence of some lawyers on the more intimate queries as to details of income. Generally, however, a pleasant approach and a frank statement of the purposes of the study were successful in producing in the person interviewed that natural state of mind where the interviewee could talk of himself and of some of his trials and tribulations. The interview itself therefore presented no substantial difficulty.

Much attention was paid to developing a proper interview blank or schedule, for this would show the interviewer what information he was expected to secure and would contain the account of the interview which would be used for tabulation and report. As the study went on, many changes were made in the schedule. Finally we adopted four different forms: one for *lawyers*, one for the *business* public (proprietors of businesses who were interviewed), one for the *resident* public (persons interviewed in the houses indicated by our sampling process), and an added schedule for those of the public who had consulted an adviser in a legal matter during the past year. In each case we stressed the securing of as much concrete information as possible. Lawyers were interrogated not only as to training, specialization, and income, but also as to specific activities, with results to clients, in the last five matters terminated. A good portion of the lawyers took this information from diary records. Laymen were asked specifically about difficulties of a legal nature which they had had during the past year, such as injuries from automobile accidents, and about transactions portending a possible legal dispute, such as contracts, leases, and wills. They were further asked whether or not they had consulted lawyers about these matters and why and with

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8. For the sampling methods followed, see notes 12 and 16, *infra*, and accompanying text.

9. The total number was only 30 for residents; for lawyers it is uncertain, probably only 2, though eight substitutions, made in the original sample before the interviews were begun, may make this number not wholly accurate.

what consequences. The kinds of questions will appear from the discussion below.<sup>10</sup>

In now presenting figures as to the results of this study in Connecticut, we trust the purpose in mind will be remembered at all times, so that our statements will not be taken with an erroneous significance, or as having a finality which is neither intended nor justified. We were immediately interested in developing techniques and methods and testing them by actual experience, rather than in collecting data at this time. Hence our figures should be used primarily to suggest leads, to arouse interest, indeed to present a challenge to be proven or disproven by other surveys. Thus, when our compilations indicate that there is a large amount of legal business untapped by the legal profession, that, in the kind of community here studied, there may not be so much a problem of the "unauthorized practice of the law" (since other agencies are not supplying the gap), as of failure of the lawyer to meet the social needs which justify the existence of his profession, it is not meant that like conditions surely prevail throughout the country, or even that more extensive figures in these same areas would of necessity confirm the tentative results. Our data are too limited in amount to justify final conclusions. But we believe they are surprising enough to make further study along these lines imperative, and should tentative conclusions receive justification in such further study, to require the bar to meet the issue of maldistribution of legal service.<sup>11</sup>

We present the results in the two divisions which our survey took, one with the lawyers and one with the public as the raw material. Together they present an anthropological picture of how people and the intermediaries of the law interact, a picture which we believe we can fairly claim is more than occasionally provocative and which suggests much for further proof or disproof.

## I. THE PUBLIC AND THE LAWYER

Much talking has been done on how the Bar functions today in its services to the public. What is the meaning of these words? They are assumed here to ask to what extent lawyers entered into matters of legal

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10. See the manual referred to in note 6, *supra*. For earlier forms of the schedules, see Committee Report of 1934, note 3, *supra*, and address of the chairman (1934) *HANDBK. ASS'N AM. L. SCHOOLS* 91-98, 183-184.

11. While this is not the place to suggest remedies for the situation in which the bar finds itself, yet the stimulating writings of Karl Llewellyn may be particularly referred to. His latest discussion—*The Bar's Troubles, and Poultices—and Cures?*—which also cites the available literature on the subject, is to be found in (1938) 5 *LAW & CONTEMP. PROB.* 104. Compare also the report of the Committee on Co-operation With the Bench and Bar for the 35th Annual Meeting of the Association of American Law Schools, (1938) 8 *AM. L. SCHOOL REV.* 1114.

dispute or those likely to lead to legal disputes and with what results. The question is reversible: To what extent are the lawyers handling their jobs well, at least in the eyes of the public; and to what extent are they not handling these jobs at all, *i.e.*, to what extent is there untapped legal business? Obviously, however, to ask the latter part of the question is to present queries not covered by the first part. Untapped legal business may be untapped because it does not need doing or because it needs doing but will not pay, or does not pay under present organization of the Bar. The first step, however, is to determine its existence.

The sample of the public chosen for investigation represented the lower and middle class income groups. These groups were chosen because they are fairly representative of the average income of the city and because, further, they afford a more rigorous test of the extent of untapped legal business, for such business would presumably occur more frequently in higher income groups.<sup>12</sup> The sample contained both the residences and the businesses scattered through these residential districts, so that 412 residents and 61 businesses were interviewed, making a total of 473 in the sample of the public.

Of this total sample, about one-half had had legal transactions of one sort or another during the past year, but since some had more than one, the total of such transactions was 557, more than one per schedule, as the following table shows:

TABLE I.  
EXTENT OF LEGAL BUSINESS AND CONSULTATION OF ADVISER

	<i>A</i> <i>Extent of Legal Business</i>			<i>B</i> <i>Disposition of Legal Business</i>			
	<i>No. in sample</i>	<i>No. legal matters</i>	<i>Average per sample</i>	<i>Adviser consulted</i>		<i>No Adviser consulted</i>	
				<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Residents	412	315	.8	111	35.2	204	64.8
Businesses	61	242	4.0	43	17.7	199	82.2
	<hr/> 473	<hr/> 557	<hr/> 1.2	<hr/> 154	<hr/> 27.6	<hr/> 403	<hr/> 72.3

This varied as between residents and businesses, as will be seen above. But about three-fourths of the legal matters of both resident and business public were transacted without any outside advice, whether of lawyer, banker, politician, or any one else.

What are the matters on which a lawyer or some other adviser might be consulted? The question, in itself, is illuminating. Try it on five people not lawyers and you will find it indicative of the general notion

12. These samples were chosen by taking the 8th name and every 20th thereafter from the New Haven City Directory for Wards 5, 6, 7, 9, 16, 17, and 30. An earlier study by the Yale Institute of Human Relations, which was made available to us, had shown that these wards represented the income groups desired.

of a lawyer's function. If there has been an accident of some severity, or an important contract broken, or a personal feud making a man very hot under the collar, the person asked will remember and will tell you at once. If not, his first response will be "Nothing," since the usual notion of lawyer is still of a surgeon, called in for serious operations, or of a witch doctor, to harass the enemy. Other matters, ultimately resulting in considerable expense and worry or even those which might have saved such expense and worry, had they been entered into with proper advice, are simply not associated with the lawyer. We divided our questions on legal matters, then, between matters for legal adjustment, defined as disputes which had arisen between two or more parties, and matters for legal preventives, defined as transactions, mostly of a contractual nature, which were open to possible future disputes.

Of the first group—matters for legal adjustment—it is reasonable to guess that most serious matters were covered, unless they related to criminal actions in which the person interviewed was the defendant. (Our sample of the public was so free from any criminal actions that we ultimately dropped the question, recognizing that, at times, discretion is the better part of interviewing.) But it is highly probable that preventive matters occurring during the past year are underrepresented. It is impossible for any field worker to ask specific questions under the more than 200 and possibly 500 fields of specialization reported by the Illinois Bar Association,<sup>13</sup> and the schedule was reduced to cover a limited number of frequently occurring transactions, with a general question to jog the memory for others.

Of the 557 transactions reported as occurring during the past year, however, there were 258 matters for adjustment and 299 matters for prevention. On 47% of the first category some outside advice was sought, and on only 11% of the second. Together, since preventive matters were the more frequent, 28% of all legal transactions were handled with, and 72% without, outside advice. Since certain rather important differences were found between the resident and the business schedules, we have felt it imperative to consider them separately.

#### A. *The Resident Public*

The 412 residents interviewed were found to have had 197 adjustment and 118 preventive matters, a total of 315 legal transactions, or about three-fourths per schedule. In 111 of these 315, outside advice was obtained, that is, in 88 of the adjustment matters, 45% of all, and in 23 preventive matters or 19% of all. The degree of "advice" ranged, naturally, from a single interview to the passage of the case through trial.

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13. See Stephens, *The "Experienced Lawyer Service" in Illinois* (1934) 20 A. B. A. J. 716, (1934) 13 TENN. L. REV. 41, 186.

TABLE II.

LEGAL MATTERS, WITH ADVISERS CONSULTED  
(Resident Public)

	Total		Adviser consulted		No adviser consulted	
	No.	%	No.	%	No.	%
Matters for preventives	118	37.4	23	19.4	95 <sup>14</sup>	80.5
Matters for adjustment	197	62.5	88	44.6	109	55.3
Total legal matters	315	99.9	111	35.2	204 <sup>14</sup>	64.7

We attempted, by dividing the residents into income groups, to see whether the family income made a difference in the degree to which legal problems were turned over to outsiders. For incomes over \$2,000 there was a somewhat higher per cent of adjustment matters in which outside aid was sought; but the number of each is so small that it is dangerous to present figures. Were the same difference present with larger numbers of each, it would probably be significant. On preventive matters, a slightly higher per cent of the incomes under \$2,000 sought outside advice, but the difference is not high enough to be significant, even if numbers were large; in other words, it was within the range of probable error. Unfortunately, our small sample prevents any worth while analysis. To what extent did free aid encourage smaller income groups in preventive matters—free aid either of clinics, lawyers, or others? Why do not the contingent fee and the accident shift our percentages the other way in adjustment matters? In short, our figures here tell us nothing on income except that we need more figures. It is clear, however, that in all income groups outside advice was asked more frequently in adjustment matters than those classed as preventive. The types of matters for legal adjustment which had occurred during the past year varied in their numerical importance from those found in businesses, to which we will refer later. Here the largest number was that of accidents, with landlord-tenant disputes and uncollected bills next following.

TABLE III.

KINDS OF MATTERS FOR LEGAL ADJUSTMENT, WITH ADVISERS CONSULTED  
(Resident Public)

<i>Transactions</i>	Total	Adviser consulted	No adviser consulted
Accidents	40	28	12
Inheritance	18	13	5
Domestic differences	14	4	10
Landlord-tenant	31	16	15
Bills uncollected	27	3	24
Work conditions and wages	18	7	11
Mortgages	11	4	7
Loans	18	5	13
Other	20	8	12
TOTAL	197	88	109

14. Includes 17 cases where the transaction took place with a bank, Home Loan Co., etc.

As this table shows, outside advice was resorted to about two-thirds of the time when the dispute concerned an accident. It was frequent, too, in matters of inheritance and of landlord and tenant; but these were the only ones where such advice was resorted to in as much as half the cases.

The transactions classified as preventive which occurred most frequently among residents are made clear from the following table:

TABLE IV.

KINDS OF MATTERS FOR LEGAL PREVENTIVES, WITH ADVISERS CONSULTED\*  
(Resident Public)

<i>Transactions</i>	<i>Total</i>	<i>Adviser consulted</i>	<i>No adviser consulted</i>
Rent with lease	16	1	15
Income tax return	62	6	56
Sale or purchase: real estate	9	4	5
Property arrangement	2	2	0
Will drawn	3	3	0
Mortgage given	22	5	17
Mortgage received	1	0	1
Other	3	2	1
<b>TOTAL</b>	<b>118</b>	<b>23</b>	<b>95</b>

For a sale or purchase of real estate, a will or property arrangement, outside aid was likely to be sought; for a mortgage, occasionally, where the mortgage was taken by a bank or other institution. Beyond that, consultation was unlikely, except for a very occasional income tax or property arrangement.

We know then that in 45% of the adjustment matters and 19% of the preventive matters which occurred during the year our residents obtained outside advice. The adviser might be a lawyer, a minister, a political boss, or a bank. Actually in 82% of all the cases where advice was had it was given by a privately practicing attorney. In another 5% free legal aid was obtained from a clinic, or from the city attorney. Only 14% (or fifteen matters in all) went to other than lawyers. These percentages are, of course, not definitive, in view of the small numbers involved, but, so far as they go, they show that the great majority of those who consulted any one went to lawyers.

If these figures were broken down, they show a difference, though not a great one, between adjustment and preventive matters. A privately practicing lawyer was the person consulted in 83% of adjustment matters. Included in the other 17% were the Legal Aid Society and its attorney (6%), an insurance company, the AAA, a realtor, an adjustment bureau, a bill collector, the small claims court, the bank, and a policeman. A lawyer was consulted in 78% of the preventive matters



where any outsider was consulted. Other advisers included banks and accountants, but it must be remembered that on only twenty-three preventive matters was any outside advice of any kind sought.

Does this mean that all the talk of unauthorized practice of law is exaggerated? No final answer can safely be made from our small sample. Common sense tells us that if our sample contained more large income groups we might find other than lawyers consulted more frequently. In the soundings which we attempted with our figures there was a tendency for those who consulted such organizations as banks or accountants or the AAA to be in the higher income groups. Moreover, it would be desirable to have data concerning the type of matter handled with other aid than that of a private lawyer, as, for example, whether the more lucrative business was thus handled.

Did it pay to ask outside advice? This question can only be asked about matters already under dispute. For preventive matters, occurring within the past year, the time is too short to afford a judgment. Who knows whether a will made out within the year, or a lease made two months ago, may prove better because of outside advice? If we take as our standard in the disputes the satisfaction of the person interviewed the first answer seems to be "Yes." Unfortunately, the detailed schedule giving an accurate picture of the case, what was done, whether the person involved was plaintiff or defendant, fees, etc., was developed too late to afford numbers for an objective analysis.

But taking the word of the person interviewed, we find that the number of cases reported satisfactorily terminated was four times those reported unsatisfactory in their ending. If we compare matters where an adviser was consulted with those where no adviser was sought, we find that with an outside adviser 48% had a satisfactory termination, while without an adviser the percentage was 28. This difference is conspicuous, but not as significant as it at first appears, as can be seen from the following table:

TABLE V.  
MATTERS FOR ADJUSTMENT; SHOWING SATISFACTION WITH  
AND WITHOUT AN ADVISER  
(Resident Public)

	Total	Satisfactory		Unsatisfactory		Pending		Dropped		Unknown	
		No.	%	No.	%	No.	%	No.	%	No.	%
Adviser consulted	88	42	47.7	11	12.5	17	19.3	16	18.2	2	2.2
Adviser not consulted	109	31	28.4	8	7.3	37	33.9	15	13.7	18	16.5

The great difference between those satisfactory and those unsatisfactory lies in the extent to which, where no advice was sought, the matter was still pending. These pending cases might well swing the balance definitely in one direction or another. It would require a larger number

of cases, carefully analyzed as to the relative seriousness of those matters on which advice was asked as against those unadvised, analyzed also as to the relation of interviewed persons (as whether plaintiff or defendant), a breaking down of the pending cases into the active ones and those not yet seriously pressed, and a consideration of dropped disputes, to develop the real significance of such a table.

These figures include all advisers, whether policeman, realtor, or AAA. If we deal with practicing lawyers alone, we find that of the matters known and terminated the extent of dissatisfaction was somewhat higher than for all advisers. To put it in another way, where advice was sought of other than lawyers, it was almost invariably reported as satisfactory, whereas the dissatisfied interviewees had consulted lawyers in all cases but one. The reasons given for dissatisfaction with the lawyer were various: Many charged him with fraud, incompetence, delay; one that he lost the case. Two-thirds of those who consulted a lawyer said his fee was reasonable; one-third that it was too high. But a high or low fee was not always combined with satisfaction or dissatisfaction. In ten cases the lawyer charged his client no fee at all, including one case where his client was a relative, two where clients were friends, four where cases were dropped, one where the case was taken on a contingency fee and lost, and one where the fee was paid by some one else. Five other cases were handled free of charge by legal aid or city attorney. Incidentally, among these five cases, two said they would not go again, though all were free. Of those other than lawyers who gave advice (excluding legal aid) few made any charge for the advice (3 out of 10).

Our figures would lead us to an intriguing but strange conclusion: When people seek outside advice they are much more apt to be satisfied than dissatisfied by the outcome, but when they seek it of a practicing lawyer, satisfaction, while still much greater than dissatisfaction, is not quite as high as for other advisers. This may be the kind of nonsense one arrives at with small figures. Or, it may have a real sense in it unobserved without further analysis. Was it that advice of other than lawyers was more frequently free? Was it because more serious questions went to lawyers—did those who lost a case blame the lawyer, or the unsuccessful defendant blame the lawyer? Are lawyers proving less competent in certain matters than other advisers, or charging fees higher than the traffic will bear? Were there more material available, sufficiently detailed for careful analysis, these questions might be answerable. Indeed we would not present these small numbers at all if any others were available or if occasional remarks on schedules, such as "Don't trust lawyers," etc., did not indicate the existence of an attitude. They remain important questions to the Bar interested either in the competence of its members or in the reputation of the Bar with the public, irrespective of real competence.

Choice of these lawyers who may or may not have been satisfactory was made in a remarkably hit-and-miss fashion. The great majority of the residents asked friends and found out from them the name of a lawyer; a much smaller number went to an attorney with whom they had had previous contacts; a few followed a doctor's recommendations; only one said a lawyer offered his help.

But it should be recollected that not even one-third of the residents who had any legal transactions asked outside help, not even half where more immediate legal adjustment was involved. All of the residents, whether they had had legal transactions or not, were asked questions aimed to bring out their familiarity with lawyers and with specialization. Over one-third knew no lawyer to whom they could go. Asked how they would find one, in case of need, they answered diversely that they would go to a friend, a relative, an employer, or that they didn't know what they would do. About one-half of the residents knew the name of at least one lawyer. About fifty residents recognized that there might be specialization in law, and were apt to know, for example, the name of one lawyer noted for real estate work, or one prominent politically, for criminal cases. One other group of about fifty claimed to know the name of a lawyer, but would not give it. About 147 residents who had had legal business but had not gone to a lawyer were asked their reasons. The answer of 65 was either that it was unnecessary or that a lawyer could not help (this last was sometimes accompanied by the statement that the other fellow had no money, and sometimes by remarks indicating suspicion of lawyers); the rest either that they had put it off or that they knew no lawyer to go to or that they could not afford one.

### B. *The Business Public*

All of the 61 sample businesses were neighborhood enterprises, and none were large. The total legal transactions among them for the past year was 242, an average of four per business, which is much greater than for residents, where the average was three-fourths of one transaction per resident. Sixty-one of these 242 transactions, or exactly one apiece, were legal adjustment matters; 181 were preventive matters, averaging three per business. So, although the extent of both adjustment and preventive matters was greater than among residents, it appears that for residents, the proportion of adjustment matters was greater than the proportion of preventive matters, while for businesses preventive matters occurred more frequently than disputes. How much of this is due to the possibility that a business man's memory is more acute than that of a resident for transactions which did not necessarily involve serious situations at the time, it is impossible to say.

On only 18% of all these legal transactions did the business man seek outside advice, so far as disclosed, as is seen by the table below:

TABLE VI.  
LEGAL MATTERS, WITH ADVISERS CONSULTED  
(Business Public)

	Total		Adviser consulted		No adviser disclosed	
	No.	%	No.	%	No.	%
Matters for preventives	181	74.8	11	6.0	170	93.9
Matters for adjustment	61	25.2	32	52.4	29	47.5
Total legal matters	242	100.	43	17.7	199	82.2

This low total is due to the larger number of preventive matters included in it; actually the business man got advice on more than half (52%) of adjustment matters (a percentage higher than the corresponding one with residents), but on preventive matters his percentage was only 6, as against the resident's 19%. These businesses were examined for income differences as were the residents, to see whether outside advice was more frequently asked by the larger or the smaller business. In matters for legal adjustment there was distinct indication that the lower income brackets of businesses went without outside advice more frequently, in proportion to occurrence, than did the higher. In preventive matters there was a hint of the same tendency, though the extent to which any income group asked outside advice in preventive matters was negligible.

The most frequent matters for legal adjustment occurring in these businesses during the year 1934 were uncollected bills, followed at length by disputes about merchandise delivery and then by a small miscellany. The uncollected bills were referred to an outsider almost one-half of the time, the few landlord-and-tenant, wage, and endorsement disputes went to an adviser, and a portion of the merchandise delivery disputes were likewise so treated. The other cases of assistance sought were negligible.

TABLE VII.  
KINDS OF MATTERS FOR LEGAL ADJUSTMENT, WITH ADVISERS CONSULTED  
(Business Public)

Transactions	Total	Adviser consulted	No adviser disclosed
Accidents	4	1	3
Landlord-tenant dispute	2	2	0
Bills uncollected	39	23	16
Improper billings	3	0	3
Merchandise delivery dispute	11	4	7
Wage dispute	1	1	0
Loans endorsed	1	1	0
TOTAL	61	32	29

The transactions classed as preventive occurred among these businesses in the following order of frequency: income taxes, rentals, government permits, insurance, other taxes, loans received, endorsements, sale or purchase of auto, installment buying, with a smattering of purchases of business, other investments, mortgages, property arrangements, and incorporation.

TABLE VIII.

KINDS OF MATTERS FOR LEGAL PREVENTIVES, WITH ADVISERS CONSULTED  
(Business Public)

<i>Transactions</i>	<i>Total</i>	<i>Adviser consulted</i>	<i>No adviser disclosed</i>
Government permit	22	0	22
Insurance	19	0	19
Investment	2	0	2
Loans received	11	0	11
Loans endorsed	9	0	9
Mortgage (given or received)	2	0	2
Auto (sale or purchase)	9	0	9
Installment buying	5	0	5
Rents	40	2	38
Income tax return	42	6	36
Other taxes	16	0	16
Purchase of business	2	1	1
Property arrangement	1	1	0
Incorporation	1	1	0
TOTAL	181	11	170

It will be seen that the only matters on which outside advice was known to be sought were leases, income taxes, both to a small extent, one property arrangement, and an incorporation. It would be interesting to know why the business man asked outside advice on preventive matters even less frequently than the resident. It may be, of course, that, since many of these are recurring problems, he has become accustomed to handling them himself.

When the business man asked advice, in the great majority of cases (80%) he turned to a privately practicing attorney. In adjustment matters the per cent was 85, in preventive 64. But our figures here were even fewer than in the resident sample. Expressed in numbers, on 32 of the 61 legal adjustment matters, outside advice was sought and in 27 of these it was a private lawyer; of the total of 181 preventive matters, 11 asked outside advice and 7 of these advisers were lawyers. In all, 9 legal matters were advised upon by other than practicing lawyers. Our tables are so arranged that it is difficult to distribute these 9, but they appear to be accountants, bill collectors, an insurance company, one city attorney, and a notary public.

Where outside advice was asked, a somewhat higher per cent than residents, 62.5% or 20 of the 32, reported a satisfactory termination.<sup>15</sup>

TABLE IX.

MATTERS FOR ADJUSTMENT; SHOWING SATISFACTION WITH  
AND WITHOUT AN ADVISER  
(Business Public)

	Total	Satisfactory		Unsatisfactory		Pending		Dropped		Unknown	
		No.	%	No.	%	No.	%	No.	%	No.	%
Adviser consulted	32	20	62.5	2	6.2	7	21.8	3	9.4	0	0.0
Adviser not consulted	29	11	37.8	0	0.0	7	24.1	7	24.1	4	13.8

In fact only two reported dissatisfaction—four not reporting. Again a large proportion of these cases where no outside advice was asked were still pending. The two reported dissatisfied advisees were both dissatisfied with lawyers. One charged incompetence, and the other overcharging. In adjustment matters, twice as many matters were taken by lawyers on the basis of a flat fee as on a contingent fee. In preventive matters all were flat fees. There were no retainers reported from our groups of small business men. In all cases but one, the lawyer's charge was reported as reasonable.

The business men found this outside advice primarily through friends, who told them where to go. In a few cases the help was offered, also in a few cases (though a higher proportion than among residents) the business man turned to a lawyer who had done work for him before, and in a few others he consulted a relative.

## II. THE LAWYER AND THE PUBLIC

We have been talking about the public and its relation to the lawyer. What about the lawyer himself? Pressed for time and funds we obtained a sample of 50, which we have used as the basis for a generalized description.<sup>16</sup> The typical lawyer, according to this description, is a man engaged entirely in the private practice of law, that is, his earned income comes entirely from this source. In the sample of 50, 33 were engaged exclusively in practicing law either for themselves or as partners. Ten others combined the private practice of law with other legal activities, as their exclusive source of earned income. Of these ten, two spent 75% of their time in private practice, and 25% in government legal and

15. If we consider expressions of satisfaction irrespective of whether the case had terminated, 26, or 81% were satisfied.

16. This sample was obtained by taking every 8th name in the list of lawyers given in the latest Connecticut State Register and Manual of 1933, supplemented by those admitted since its publication. Due to some omissions of those for various reasons unavailable the sample was enlarged by the 20th name and every 24th thereafter.

judicial work. One more practiced independently 70% of the time and did legal work for an insurance company the other 30%. Four others engaged in private practice 50% of the time, two spending the remaining 50% in judicial work, and 2 in government legal work. Another, while in private practice 25% of the time, was a referee in bankruptcy for the other 75%. Still another had only 18% of private practice, the other 82% being legal work for an insurance company. And one, while engaged in private practice only 5% of the time, spent another 10% of his earning time teaching law and 85% in work for an insurance company. Five more combined practice for themselves with non-legal activities, though some of these were of such a nature that legal training was held to be part of their equipment. One had 80% of private practice and 20% as executive in a real estate organization. Another spent two-thirds of his time in private practice and one-third as court stenographer. A third practiced independently 45% of the time, taught law for another 5%, and during the other half of his time was a special newspaper writer, using his legal training. A fourth practiced 40% of his time and spent the other 60% as a rather important political figure holding state office, while a fifth, giving only 10% of his time to law practice, spent another 5% as official of a realty company and the rest as a paid town official. Two lawyers had entirely withdrawn from practice and were in business.

So, it seems that, of our sample of 50, 43 received their earnings exclusively from law, either engaging entirely in private practice or combining it with other legal activity, while 5 combined law with non-legal work, and 2 derived no income from law, having withdrawn from practice.

We are confining our discussion of income to those whose earned income is derived entirely from law, either as practitioners, corporation employees, or government and judicial workers. One would be hard put to it to describe any income as "typical" in the figures presented by the following table:

TABLE X.

## INCOME OF LAWYERS

<i>Yearly net income</i>	<i>Years in Practice</i>					<i>Total</i>
	0-4	5-9	10-19	20-29	30 and over	
\$ 1 — 999	4					4
1,000 — 1,999		2	3		1	6
2,000 — 2,999	4	4	2	2		12
3,000 — 4,999		2	2	1		5
5,000 — 9,999		2	4	1	.3	10
10,000 — 14,000		1	1			2
(none over)						
Unknown		1	1	2		4
TOTAL	8	12	13	6	4	43

Since income figures for lawyers are not too plentiful, we might compare them with the findings in the Wisconsin study directed by Dean Lloyd K. Garrison. Lawyers in practice four years or less in Wisconsin averaged in 1932 (arithmetically) \$1,773 net; those admitted the same length of time in Connecticut averaged in 1934, \$1,561; those practicing five to nine years in Wisconsin averaged \$3,196 yearly, those admitted five to nine years in Connecticut, \$4,000; practicing ten to nineteen years in Wisconsin, \$5,035, admitted for the same period in Connecticut, \$4,375; practicing twenty to twenty-nine years in Wisconsin, \$7,846, practicing the same number of years in Connecticut, \$3,750. Beyond that our scattered figures make comparison impossible. Suffice it to say that Dean Garrison finds a great jump in income of lawyers practicing five to nine years over those less than five and a continued increase until the thirty-fourth year, with a continued decrease after that, while the Connecticut figures, also showing a conspicuous jump in income between those admitted less than five years and those admitted five to ten years, show a continued increase to the twentieth year of practice, a slump in the twentieth to twenty-ninth year's admission and an increase only equivalent to the tenth to nineteenth years for those over thirty years in practice. In other words, our figures suggest a peak of lawyers' earning powers during the tenth to nineteenth years. This might not be borne out had we larger figures.<sup>17</sup> It is probable that there exists an optimum period of lawyers' earning capacity, be it only due to gradual retirement. What that period is, of course, is still unknown.

It might be added that the median income for the Connecticut lawyers, \$2,000-\$2,999, is not far from the median for New York lawyers in 1933, found in the New York County Lawyers' Association survey, under the chairmanship of Mr. Lazarus.<sup>18</sup> But the spread is not nearly so great. In our study there were found no enormous incomes, and few which were very small, or under \$1,000.<sup>19</sup>

Again, the Wisconsin report shows that, in 1932, 48% of all the lawyers received under \$2,000 a year, and the New York County Lawyers' Association shows a like result in 1933 in New York. Here (in 1935) we have 25% receiving this income. Dean Garrison also reports 19% as receiving more than \$5,000 a year; we have 29%, and

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17. One fond alumnus suggests, however, that this covers the period since the Yale School of Law—from which many Connecticut lawyers come—reorganized its training and began to reach its present standing.

18. See report of the New York County Lawyers' Association, *loc. cit. supra* note 5.

19. It is our guess that the number of lawyers who did not answer the question about income in Connecticut would somewhat raise the figure, since, on the whole, these four, all older lawyers, appear to be prosperous, and where gross income was given it was a fairly high figure. This differs from the experience reported in New York that those who did not answer were probably ashamed of their incomes. The New York survey was conducted by mail questionnaire, that in Connecticut by personal interview.



the New York County Lawyers' Association, 32%. The accumulation of such material, if we can iron out definitions and allowance for time differences, so that figures are really comparative, begins to give possibilities for considering regional differences.<sup>20</sup>

No significant relationship between income and education was obtainable because of the fact that the proportion of college men was so much greater in the younger group than among those who had been practicing for longer periods. The typical lawyer in this study is a college graduate with three years of day law school experience, a considerable difference from the picture, for example, in New York.

Usually the Connecticut lawyer is not a specialist. He does not wish to specialize and says that it does not pay.<sup>21</sup> If, however, we define specialization in terms of repeating the same type of work, specialization is more general than first believed. Thirty were said not to specialize, a larger figure probably than we would have had, had we originally defined specialization as a type of work done more than twenty per cent of the time. Among the remainder there are specialists in torts, real estate, and corporate practice, with a smattering of specialization in criminal law, domestic relations, probate, insurance, taxation, and workmen's compensation cases. Most lawyers would probably be found to be specialists in torts according to our definition, but, somewhat to our surprise, we found that the amount of time spent by many lawyers on other than torts is larger than anticipated.

In comparing the percentage of time spent with the percentage of income derived from various types of legal work, torts, on which the largest single per cent of time was spent, also represented the largest single per cent of income. As the per cent of income derived from torts was higher than the per cent of time spent on it, the not too astonishing conclusion is indicated that torts is more lucrative than the average practice. Corporate work also seems to have given a higher per cent of return than the time spent on it would anticipate. In other types of work the amount of income seems about in proportion to the amount of time spent on it.

In the course of developing our schedule we began to ask details about the last five items finished by the lawyer interviewed. We believe such

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20. The net incomes given above may approximate gross income closely, or not at all, depending upon such factors as whether the lawyer has an office alone, shares his organization, is an employee of a corporation, etc. The most frequent difference between gross and net income in this group was somewhat over \$1,000.

21. There was, however, a scattered preference for probate, domestic relations, negligence, corporation, and public utility work. Some specialists longed for general practice. This was true of a trial lawyer, and specialists in corporate taxation, negligence, and criminal causes. Another lawyer specializing in corporate practice would prefer trial work, two negligence lawyers would like to engage in municipal and corporate law, and a "criminal lawyer" would like to be in the constitutional field, etc.

material, coming often from diary records, is a valuable sample of lawyers' work. Used as a check upon the lawyer's own statement of the types of law he practices, we found that of the total items recorded by our sample (221), 51 were torts, 52 property, 20 estates, 23 other contracts, 11 collections, and 10 wills, while there were less than 10 each of corporate matters, taxation, domestic relations, mechanics liens, bankruptcy, criminal cases, and partnership, with 18 miscellaneous cases.<sup>22</sup>

The most typical lawyer in our survey was an independent attorney who shared an office with one or two others. The extent of doubling up was conspicuous. There were 28 independent lawyers of the 48 practicing law, a somewhat higher proportion than was found in New York. Only nine had offices alone, the rest sharing space with one to four other lawyers. Predominantly this consisted of the formal division of office expenses, but about one-sixth shared both expenses and work, ranging from occasional helping out to almost informal partnerships. The proportion of all lawyers practicing alone increased after the first five years of practice, but those sharing offices continued high until fifteen years' practice, after which it seemed to drop off. About one-fourth of the lawyers were partners, and 17% were legal employees, either of corporations or law firms. Only eight were in offices of more than five lawyers, either as partners, as employees or independent sharers. The factory system of law practice cannot be said to be conspicuous in our Connecticut sample.<sup>23</sup>

Cases ordinarily come to a lawyer through an already existing relationship of either a present or a former client. At least of the 221 cases in the diary records reported, 87 were said to have come to the lawyer through these means. Another 33 came through business contacts, 29 from friends, 21 through the recommendations of clients and 21 through other attorneys, 18 through recommendations of friends. Scattered cases, each less than 10 in number, came through social contacts, local reputation, or because the client just walked in. No case was reported of a lawyer sought because of listing in a legal directory.

The subject of fees charged by lawyers has interest from several points of view, among others, the extent to which fees may be, or are,

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22. Few except tort cases went to court; of these, 33 out of 51 cases went to court. The average time of each court case was 7 hours, though trial preparation ranged from 1 to over 80 hours. Of 52 property cases, 4 went to court; of 20 estates matters, 2; of 23 general contracts cases, 5; of 8 bankruptcy cases, 1; of 10 will and probate matters, 7. Office work on estates in most instances was concluded in less than 7 hours; for sale or purchase of property, less than 5 hours; for property cases, less than 3 hours. General contracts cases required most frequently either 1 hour or 5 to 7 hours of office work; will probate matters and collections, predominantly 1 hour. These figures, being limited in number, are, of course, only suggestive.

23. The highest range of income return was, naturally, partners, next came corporation employees, with those practicing alone and sharing expenses third, and those sharing expenses and work fourth.

in fact, standardized at the present time. The table below gives examples of fees reported by lawyers based on cases within the last three months prior to the interview. In some cases, where the lawyer had only one transaction of a kind, the maximum, minimum, and average fees are naturally the same. When no case of the kind was had, nothing was put down on the schedule. The heading "most frequent" means the model numbers or the class into which the largest single number of reports fell. Though rough, the use of the mode, combined with general comparisons, is probably best for our small numbers.

TABLE XI.  
FEES ACTUALLY CHARGED

<i>Transactions</i>	<i>Maximum</i>	<i>Most Frequent Minimum</i>	<i>Average</i>	<i>Largest charged by any one</i>	<i>Smallest charged by any one</i>
Simple will	10-15	10-15	10-15	over 200	5-10
Will with trust	15-25	15-25	15-25	over 200	5-10
Apt. lease (form)	5-10	0-4	5-10	25-50	0-4
Store lease (form)	5-10	5-10	5-10	100-199	0-4
Deed, sale of land	5-10	5-10	5-10	15-25	0-4
Mortgage deed	5-10	5-10	5-10	25-50	0-4
Income tax					
(under \$10,000)	10-15	10-15	20	50-75	5-9
(over \$10,000)	15-25	10-15	15-25	25-50	15-25
Title search	15-25	10-15	10-15	100-199	10-15
Consultation					
(few records)	.....	0-4	5-9	.....	0-4
Divorce					
(uncontested)	100-150	75	100	300	25

The indications are that while between the highest fee charged and the lowest charged there is often a great difference, the usual fees, or most frequent, are remarkably similar for maximum, minimum, and average. It may well be said that standardization is already taking place for the normal and uncomplicated work, at least in some types of transaction.<sup>24</sup>

Unfortunately the small number of cases available does not justify an analysis of the relation of fees to the type of case and amount of work done. It is not surprising that in tort cases twice as many were taken on a contingency fee as on a flat rate; it is more surprising that a third of these were fixed in fee. In all other transactions, except collection, the fixed fee predominated and contingency fees were rare, occurring only in certain property and contracts cases and one corporate matter. The hourly fee was charged mostly for estates work, sale of

24. These figures are substantially similar to those adopted by the Hartford County Bar Association as recommended tables of fees for the lawyers of that county. New Haven Register, April 30, 1938.

property, and probate and bankruptcy matters. Only eight of the lawyers did work on retainers. Of these one had one retainer, three had two retainers, and four other lawyers had four, five, six, and "several" retainers respectively.

Free cases were infrequent in this record of the last five transactions completed by each lawyer. Out of 188 transactions where the information was known, only five were free, two because of poverty and three because they concerned a friend. Three others, one involving a relative and two involving friends, received reduced fees.

All the lawyers interviewed had been asked to estimate the average time spent on unpaid activities each week. This included legal services donated, not work done for clients who did not pay their bills. It also included services of a non-legal nature, official activities for church, business, public, political, or charitable organizations. There were only 6 who had no such unpaid activities. Eleven did no free legal work, 21 averaged 1 to 5 hours a week, 10, 5 to 10 hours a week, and 6 more than 10 hours, averaging for all the lawyers about 4 hours of free legal work done per week. Somewhat less time was reported to be spent on donated non-legal services; 10 gave no free time to this, 29 gave an average of 1 to 5 hours a week, 7 gave 5 to 10 hours a week, and 2 more than 10 hours. The average for the whole was, according to these estimates, roughly 3 hours a week.

Not the least valuable part of an interview are the comments made to the field worker by the people interviewed. Among lawyers there was some difference of opinion about the present situation of the Bar. One man, himself successful, remarked that most lawyers could make a living if they were not lazy, and another that there were not too many lawyers, not enough, in fact, if conditions became better. But the general opinion indicated anxiety: lawyers were having a hard time—there was little work for the young lawyer—there were too many lawyers—a man couldn't get started unless his forebears had been lawyers—banks and trust companies were taking away the business—and even collection agencies obtained powers of attorney to represent clients in the small claims court.

Many remedies were suggested by the lawyers interviewed. Real estate men and banks should not do so much legal work. Possibly the lawyer should be paid a certain amount by the state and do minimum work for people at large. Average earnings should be published, so the public could see they are not large. The law should be changed so that lawyers must certify that income figures are taken from records. A law might be passed that no legal instrument is legal unless a private lawyer attaches his signature. There is too much talk about crooked lawyers. It is all right to go after the crooks, but to talk and do nothing gives the public the impression that all lawyers are crooks. The Bar should keep its

skirts clean, but does not. It should disbar those that need it, instead of letting them degrade the entire Bar. And finally a feeling that the public regarded lawyers as unreliable, and lumped the good with the bad, led many to be in favor of advertising, traditionally so at variance with the profession's ethics.

The lawyers interviewed, with one exception on a lawyer's list, said they used no form of advertising but the legal directory. When asked what forms were desirable, disapproval of individual advertising was almost unanimous.<sup>25</sup> About two-thirds favored some sort of general advertising. Several said that education of the public on the functions of the lawyer was necessary; others that advertising was desirable so long as it did not tout any particular person. One advocated doing something to put lawyers before the people rather than banks, etc., but would not call this advertising. Another said that advertising should be done, but by the state association as a unit, while a further view was that education of the public would be a good idea, but that every family should have its family lawyer. General radio talks by the Bar Association were most in favor, since three times as many approved as disapproved. Several thought it should have been done long ago, and that the radio talks by the medical profession afforded an example which should be followed to enlighten the people about the law. One remarked that such addresses were good, but that they might give the listener the idea that he did not need a lawyer; it would be helpful, however, to tell him to go to a lawyer when in difficulty. Another said that the radio should be used to prevent people other than those admitted to the Bar from practicing. Legal directories were regarded with slightly more favor than disfavor, the disfavor being based largely on a feeling that they were ineffectual. Newspaper advertisements by the Bar were regarded with somewhat more disfavor than favor. One man said an officer of the Bar should see that cases are properly reported to the press, instead of allowing garbled accounts to appear, while another thought magazine articles were the best form of advertising. Another even suggested circulars, of what type he did not say.

Those who disapproved of any form of advertising did so largely on grounds of dignity, and added, for example, that it might seem as though lawyers were trying to get business; that sooner or later the public is bound to find out whom it can trust; that the Bar should clean out its own stables, and that if the Bar were cleaned up, advertising would be unnecessary. One said that banks advertise and take business away from

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25. One said, however, that lawyers must solicit business to get it, another that the Bar should either approve solicitation or do away with it, another that solicitation depends on the kind employed, another that a lawyer may cultivate a banker but cannot go looking for business, and still another that to say to a business man, "Can't I do your work?" is permissible.

lawyers, but that he was still too old fashioned to believe in advertising. Another did not like advertising, but still thought something would have to be done. Several disliked advertising because, in their opinions, it would not do any good. Yet, as has been noted, the great majority were in favor of advertising, even though vague as to its form.

Other more or less interesting ideas, as well as information, were offered by the lawyers interviewed. Some of this has been noted in the footnotes; the remainder must be omitted for lack of space. Enough has been given, perhaps, to indicate that many of the lawyers have come to believe that all is not well with the profession, certainly at least as a form of livelihood, although they are in doubt as to what can be done to set it right.

### III. IN CONCLUSION

The two parts of this study do not completely dovetail. The first is a survey of the public contact with legal advice, while the second is a general study of the lawyer and his functioning. There are, however, certain correlative aspects, tying the two together. The lawyers' earnings are low, and there is a great deal of legal work undone which might become what the economists call "effective demand" under other conditions. What these conditions are is not the function of this article. Many excellent suggestions have been made.<sup>26</sup> But they face the disadvantage of inadequate knowledge of that general term "how the Bar is functioning," and attempts to educate the public will work under the same disadvantage. We have tried not only to present certain facts, but to indicate some of the valuable and needed knowledge which can be obtained only with a sufficient number of cases for detailed scrutiny, the need for such scrutiny to arrive at accurate knowledge, and the need, also, for examining varying income and geographic groups, both of lawyers and of the public.

The outstanding conclusion of this article may well be described, therefore, as the reiterated statement that we need more surveys, large enough and sufficiently well made so that we may safely analyze the results to bring out facts. The public has undone legal business; the lawyers have free time. Give us a series of studies, sufficiently similar so that we can place them side by side, and we can hope then for a reliable foundation of facts. The A.A.L.S. study has made it possible to prepare a manual for one type of survey.<sup>27</sup> It has spent care in its testing. The collateral results are suggestive, but of no value alone. It is to be hoped that others will take advantage of this preliminary work, improving it and shaping it to the useful end of that more adequate knowledge which alone can be the beginning of wisdom.

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26. See Llewellyn, *loc. cit. supra* note 11.

27. See note 6, *supra*.